

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 313 of 1990

With

CRIMINAL APPEAL No 314 of 1990

With

CRIMINAL APPEAL No 315 of 1990

With

CRIMINAL APPEAL No 316 of 1990

With

CRIMINAL APPEAL No 317 of 1990

With

CRIMINAL APPEAL No 318 of 1990

With

CRIMINAL APPEAL No 319 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE S.M.SONI

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements?
  2. To be referred to the Reporter or not?
  3. Whether Their Lordships wish to see the fair copy of the judgement?
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge?

-----  
STATE OF GUJARAT,

Versus

BHIKHUBHAI PHULCHAND SHAH

-----  
Appearance:

MR KC SHAH, APP for Petitioner

MR DC DAVE for Respondents

-----  
CORAM : MR.JUSTICE S.M.SONI

Date of decision: 12/02/98

ORAL JUDGEMENT

All these appeals involved not only the common question of law but common question of fact also and, therefore, they are disposed of by this common judgment.

2. The State has filed these appeals against the order of acquittal dated 31st January, 1990, passed by Judicial Magistrate First Class, Anand, in respective Criminal Cases Nos. 4235 of 1998 to 4241 of 1988, whereby, accused were prosecuted under Section 92 read with Rule 110 (A) of the Factories Act.

3. In all these cases accused are same being an employee of respective worker. He was prosecuted for non-compliance of said rule which provided for identity card with photograph. Defence of the accused was that all these employees were employed on the same day when the Factory Inspector visited the factory. It was being the first day of the employee the identity card with photograph could not be provided with. To this effect when a remark was made in the Inspection Register. Factory owner i.e. accused has also submitted his written explanation to this effect. Despite this, the accused came to be prosecuted and are acquitted. This judgment and order of acquittal is challenged in these appeals.

4. Question before this court is whether the order of acquittal requires interference by this court. Whether the defence that the workmen were employed on the same day is rightly accepted by the learned Magistrate or not? In my opinion, it is necessary to refer Rule 110 (A) for the breach of which the accused is prosecuted. The Rule 110 (A) read as under:

" The Manager of every factory shall provide to each worker an identity card with photograph, free of cost, in Form No.36 and shall enter the serial number of such card against the name of such worker in the register of adult workers maintained by him under section 62 read with rule 88 or the register of child workers under section 73 read with rule 93, as the case may be :

Provided that it shall not be necessary to furnish such identity card to any worker to whom an identity card containing similar particulars and information is furnished under any other law applicable to him.

(2) No worker shall be allowed or required to work in a factory unless he carries while he is at work an identity card, provided under sub-rule(1)

(3) Every worker shall, on demand by an Inspector appointed for the purposes of the Act, produce the Identity card provided to him under sub-rule (1).

(4) If any worker loses his identity card a duplicate card shall be furnished to him by the Manager immediately on production of a recent passport size photograph by the worker for affixing on it, free of charge."

Whether the workmen even if he comes on the first day should be provided with identity card to comply with Rule 110 (A) of the Gujarat Factories Rule 1963 ( Rule for short ) Sub-rule 4 of Rule 110 (A) contemplates that,"if any worker loses his identity card a duplicate card shall be furnished by immediately on production of a recent passport size photograph by the worker for affixing on it, free of charge." If a worker does not produce a photograph, duplicate card cannot be issued. Rule does not contemplate for prohibiting worker from discharging duty in absence of identity card. The facts of the present case are that on the first day when the worker attends the duty, he either may not have a photograph with him or he may not be knowing whether he will be employed or not. Atleast a reasonable time is required to be given to the employer so that identity card may be produced. It is not the case of the worker that he has furnished photograph to the employer and identity card was not issued. Even if, one reads Clause 1 of Rule 110 (A) it provides that every Manager of every factory shall provide to each worker an identity card with photograph, free of cost, in Form No.36. Even if the employer wants to comply with Rule 110 (A) of the Rules than, it is necessary first to see that the worker reports on duty and after the worker report on duty, worker is required to be taken to a photographer for a photograph and normally, photograph will not be available in the course of the day. Therefore, on the first day, the worker may not have an identity card with a photograph. In this special set of facts of this case or in identical case, if a person is employed or allow to report duty without identity card, it cannot be said that there is an intentional or deliberate breach of Rule 110 (A). If is found that the employee is employed since long or since reasonable days and is not provided identity card,

there would be a breach of Rule 110 (A). In the circumstances of the case, when the learned Magistrate has accepted the defence and this court normally would be slow in interfering with the order of acquittal when the defence of the accused is found to be a reasonable one, I do not find any reason to interfere with the said order of the acquittal in this case.

5. In the result, these appeals fails and are dismissed.

\*\*\*\*\*

saiyed\*